

No. 76-267

Supreme Court, U. S.

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MICHAEL PODAR

In the Supreme Court of the United States

OCTOBER TERM, 1976

SANDRA P. FLETCHER, PETITIONER

v.

UNITED STATES OF AMERICA

***ON PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT OF COLUMBIA COURT OF APPEALS***

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

**ROBERT H. BORK,
*Solicitor General,
Department of Justice,
Washington, D.C. 20530.***

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Petitioner contends that the trial court erred in limiting cross-examination of the complaining witness.

Following a jury trial in the Superior Court of the District of Columbia, petitioner was convicted on one count of a two-count information¹ charging attempted petty larceny, in violation of 22 D.C. Code 103 and 2202. The imposition of sentence was suspended and petitioner was placed on probation for one year. The court of appeals affirmed (Pet. App. 1a-5a).

On January 27, 1975, Janet Valentine, a store detective for Woodward and Lothrop, Inc., saw petitioner remove items of lingerie from a counter and place them

¹Petitioner was acquitted of the charge of simple assault (22 D.C. Code 504).

inside a plain brown shopping bag that she was carrying (Tr. 15-17). Petitioner was "looking around" as she removed the merchandise (Tr. 17). She then covered the contents of the bag with a small "stuffed rabbit," walked through the department area, passed approximately five cash registers staffed with salespersons, and walked onto the escalator up to the first floor (Tr. 18-19). When petitioner arrived on the first floor, Valentine approached, identified herself as a store detective, and placed her under arrest for "shoplifting" (Tr. 19-20).

Petitioner was given her *Miranda* warnings orally and in writing (Tr. 29-30). Thereafter, she told Valentine that "she was willing to pay for the merchandise that she had taken, and that she was sorry" (Tr. 32). Valentine escorted petitioner to the door of the security office. As Valentine attempted to unlock the door, petitioner bit her and started to struggle (Tr. 19-20).² Valentine "tried to calm her down," but petitioner still attempted to flee (Tr. 22).

At trial, petitioner's counsel sought to cross-examine Valentine about statements that she allegedly made to an Assistant United States Attorney, who had considered pursuing First Offender Treatment for petitioner rather than prosecuting her (Tr. 4-6). The statements, by showing that she did not approve of the diversion proposal and insisted on pressing charges (Tr. 64-65), allegedly would have indicated bias. The trial court refused to allow such cross-examination (Tr. 68-69).

The court's evidentiary ruling did not deprive petitioner of her right of cross-examination. A trial judge has broad

²The bite caused a wound approximately one-half inch in length for which Valentine consulted a doctor on two or three occasions (Tr. 20-22).

discretion to control the scope of cross-examination. *Geders v. United States*, 425 U.S. 80, 87. The trial court in this case did not abuse that discretion by curtailing inquiry into whether the complainant expressed an inclination to press charges against petitioner. As the court of appeals pointed out: "[I]f the mere pressing of charges against a defendant constituted some evidence of bias or hostility, then every complaining witness could be deemed biased and hostile and subject to cross-examination on this specific aspect" (Pet. App. 3a).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.